

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SANTA MONICA-MALIBU UNIFIED
SCHOOL DISTRICT.

OAH Case No. 2015010581

ORDER GRANTING MOTION TO
DISMISS COMPLAINT

On January 15, 2015, Parent filed with the Office of Administrative Hearings a Due Process Hearing Request (complaint) on behalf of Student against Santa Monica-Malibu Unified School District.

On February 23, 2015, District's counsel filed on behalf of District a motion to dismiss due to Student's parent's failure and refusal to participate in a mandatory resolution session. The motion was supported by exhibits, including a copy of a letter from Parent to District's Special Education Director. Parent did not file a response to the motion.

APPLICABLE LAW

A local educational agency is required to convene a resolution meeting with the parents and the relevant members of the Individualized Education Program team within 15 days of receiving notice of the Student's complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(1) (2006).) The resolution session need not be held if it is waived by both parties in writing or the parties agree to use mediation. (20 U.S.C. § 1415(f)(1)(B)(i)(IV) ; 34 C.F.R. § 300.510(a)(3) (2006).) There are no provisions of law that allow a parent or an LEA to unilaterally waive the resolution meeting. (71 Fed. Reg. 47602, No. 156 (Aug. 14, 2006).)

If the parents do not participate in the resolution session, and it has not been otherwise waived by the parties, a due process hearing shall not take place until a resolution session is held. (34 C.F.R. § 300.510(b)(3) (2006).) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented, the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the complaint. (34 C.F.R. § 300.510(b)(4) (2006).)

DISCUSSION

District's motion includes correspondence between District and Mother. Mother did not file a response to the Motion or challenge the authenticity of the exhibits to the Motion.

On January 20, 2015, District's Special Education Coordinator Kristopher Vegas emailed Mother inviting her to attend a resolution session on January 26, 2015. Mother responded in an email on the same day, stating that she "can't fit that resolution meeting into [her] schedule til (sic) March 1st or almost any day after that." Mr. Vegas responded on January 23, 2015, attaching a letter from Dr. Sara Woolverton, Director of Special Education. Dr. Woolverton explained that a resolution session within 30 days of the date of filing is mandatory unless waived by both parties, and that District wanted to participate in a resolution session. Dr. Woolverton offered an alternative meeting date of February 10, 2015. Mother responded on January 23, 2015, in a strongly-worded email to Dr. Woolverton, Mr. Vegas, and District's attorney, in which she expressed her opinion that the resolution session offered by the District was a waste of time and money, and she refused to participate.

District timely filed its motion to dismiss after the end of the 30-day resolution period, which dates from the filing of Student's complaint.

Student's parent is required to participate in a resolution session before a due process hearing may be commenced, absent a mutual written waiver, and OAH may dismiss the matter if the parent refuses to participate in a resolution session and the district provides appropriate documentation showing that it made reasonable efforts to obtain parent participation.

There has been no agreement to waive the resolution or proceed to mediation in lieu of the resolution session. Further, the District has established that it made reasonable efforts to obtain Student's parent's participation in a resolution session prior to filing its motion to dismiss, and it documented those reasonable efforts in its motion to dismiss. Mother's January 23, 2015 email to District's special education director makes clear that Mother refused to participate in a resolution session, and she has not responded to District's motion to dismiss.

Therefore, District's motion to dismiss Student's complaint is granted without prejudice to Student's right to refile a request for due process hearing on the same issues. Any newly filed complaint will also be subject to the resolution session requirement contained in the IDEA. (See 20 U.S.C. § 1415(f)(1)(B)(i); 34 C.F.R. § 300.510 (2006).)

ORDER

1. District's Motion to Dismiss Student's complaint is granted.
2. All dates are vacated.

DATE: March 3, 2015

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings